



Legal Update

March 2016

Commonwealth v. Sanchez, Mass. Appeals Court, 88 Mass. App. Ct. 249 (2016):

Issue: Whether a free standing shed in the backyard of a three apartment building would be included within the scope of a search warrant issued to search the defendant's third-floor apartment?

Background: New Bedford Police officers executed a search warrant for a third floor apartment in a multifamily dwelling. Police stopped Luis Sanchez, the defendant and obtained a set of keys from him which gave them access to the apartment. The backyard behind the dwelling was enclosed by a fence and one of the officers used a key obtained from Sanchez to open a padlock that was securing a shed door. Once inside the shed, the officer found a BMW, a dirt bike, tools, and a shopping bag. The officer used the key to gain access to the BMW. While in the shed, the officer found cocaine hidden above a ceiling panel. The police also seized receipts from the defendant indicating he rented the shed from the owner of the apartment building.

Conclusion: The Appeals Court concluded that curtilage included the shed and therefore it was lawful to search it as an extension of the search warrant. "Curtilage typically refers to the areas that the police cannot search without a warrant." *United States v. Dunn*, 480 U.S. 294 (1987).

There are 4 factors that help define curtilage of a particular home.

1. Proximity of the area to the home;
2. Whether the area is included within an enclosure surrounding the home;
3. The nature of the uses to which the area is put;
4. The steps taken by the resident to protect the area from observations by people passing by.

The *Dunn* factors support the motion judge's finding that the shed is a part of the curtilage of the third-floor apartment. The shed is within the backyard, immediately adjacent to the building in which the apartment is located, and the yard itself is enclosed by a fence. One of the most significant factors is that the defendant rented the shed from the building owner, and restricted access to it by means of the padlock he placed on the door. By placing a padlock on the door, the defendant had exclusive access to, and use of, the shed, at least in comparison to the occupants of the other two apartments in the building, or other members of the public. The Court holds that the shed was part of the curtilage of the defendant's apartment and that the warrant authorizing the search of the apartment also authorized search of the shed.

Commentary: This case helps define what is considered curtilage within the parameters of a search warrant.